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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,403	02/25/2002	David J. Luneau	10200-005001	3772
26161	7590	04/21/2006	EXAMINER	
FISH & RICHARDSON PC			TAYLOR, BARRY W	
P.O. BOX 1022				
MINNEAPOLIS, MN 55440-1022			ART UNIT	PAPER NUMBER
			2617	

DATE MAILED: 04/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/082,403

Applicant(s)

LUNEAU, DAVID J.

Examiner

Barry W. Taylor

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,4-16 and 18-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,4-15 and 20-34 is/are allowed.
- 6) ☒ Claim(s) 16,18 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/6/06
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

The Art Unit location of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 2617.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 16 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zitting et al (6,584,148 hereinafter Zitting) in view of Posthuma (6,456,694).

Regarding claim 16. Zitting teaches system and method for testing subscriber lines by using Remote Test Interface (see 36 figures 1 and 4). Zitting teaches the RTI detects start message sent from loop management device located at central office (see last paragraph column 8). Zitting also discloses the RTI recognizes other commands such as "open loop" and "short loop" commands (column 9) wherein "open loop" commands RTI to disconnect customer premises equipment via a terminal control device forming "open circuit" (182 figure 4, column 9). The "short loop" command is similar to "open loop" except processor controls termination device to form a "short circuit". Once open or short circuit formed, the central office may perform tests of the open or short circuit. Zitting further shows "generate signal" command may be sent by central office to RTI indicating that signal is to be generated by RTI enabling for

insertion loss of cable connecting central office and CPE (column 10). Zitting teaches using "start test" signal sent from central office (see step 212 figure 5, columns 10-11).

According to Applicant's, Zitting fails to teach reflected signals received back at central office (see page 2, paper dated 6/6/05).

Posthuma teaches a method for prequalifying subscriber line for DSL service (title, abstract) wherein reflected signals received in response to test single is analyzed for determining transmission characteristics of the subscriber line (abstract, col. 3 lines 9-17, col. 4 line 39 – col. 5 line 9). Posthuma discloses the benefit of using reflected signals is that service providers without physical access to subscriber line can perform test to determine if subscriber line qualifies for DSL service (columns 1-2).

Therefore, it would have been obvious for any one of ordinary skill in the art at the time the invention was made to utilize the teachings of Posthuma into the teachings of Zitting for the benefit of allowing service providers the ability to determine if subscriber loop qualifies for high speed service.

Regarding claim 18. Zitting teaches plurality of modem signals may be used (col. 8 lines 61-63, col. 10 lines 10-24). Posthuma also teaches plurality of signals maybe used (see bottom of column 4 continuing to column 5).

Regarding claim 19. Posthuma teaches the reflected signal received is analyzed or compared to empirical or simulated data stored in database to determine if subscriber loop can support DSL service (column 5).

***Allowable Subject Matter***

2. Claims 1, 4-15, 20-34 are allowed.

***Response to Arguments***

3. Applicant's arguments filed 2/25/06 have been fully considered but they are not persuasive.

a) Regarding Applicants remark regarding independent claim 16 wherein Applicants contend that Posthuma does not disclose the use of a trigger.

The Examiner notes that Applicants independent claim 16 is extremely silent with respect to using trigger.

b) Applicants generally argue that there is no motivation to combine Zitting with Posthuma because Applicants contend that Posthuma test are initiated at the CPE.

The Examiner notes that Posthuma figures 1 and 2 clearly show the CENTRAL OFFICE sends test signal towards CPE and receives a reflected signal to be analyzed. Furthermore, Zitting provides for a strong motivation to combine (see column 9 wherein after open or closed circuit is formed, the management device may perform tests of the open or short circuit).

***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barry W. Taylor, telephone number (571) 272-7509, who is available Monday-Thursday, 6:30am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Trost, can be reached at (571) 272-7872. The central facsimile phone number for this group is **571-273-8300**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group 2600 receptionist whose telephone number is (571) 272-2600, the 2600 Customer Service telephone number is (571) 272-2600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**Centralized Delivery Policy:** For patent related correspondence, hand carry deliveries must be made to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314), and facsimile transmissions must be sent to the central fax number (571-273-8300).

Barry W. Taylor  
Art Unit 2617



**BARRY TAYLOR**  
**PRIMARY EXAMINER**